6-25-2012

State v. Fifer Appellant's Brief Dckt. 39591

IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO Plaintiff/Respondent, vs. WILLIAM FIFER, Defendant/Appellant.	)	Supreme Court Docket No. 39591-2012

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JAMES A. SCHILLER
Magistrate Judge

FOR THE APPELLANT: Matthew J. Roker
LOVAN ROKER & ROUNDS, P.C.
717 S. Kimball, Suite 200
Caldwell, Idaho 83605

FOR THE RESPONDENT: LAWRENCE G. WASDEN
Idaho Attorney General
Statehouse, Room 210
Post Office Box 83720
Boise, Idaho 83720-0010

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Cases

Statutes

STATEMENT OF THE CASE

Appellant's case presents an issue surrounding the warrantless seizure of a vehicle as both a Terry stop and a caretaker function exception to the warrant requirement.

Appellant filed a motion to suppress evidence that was heard and denied by the Magistrate Court. Appellant then entered a conditional plea of guilty reserving his right to appeal. On appeal the District Court affirmed the Magistrate Court's denial of Appellant's motion to suppress. Appellant then timely filed this appeal of the previous Court's denial of his motion to suppress.

Appellant was exiting a Walgreen's parking lot during business hours when a law enforcement officer responding to a citizen's call turned on his overhead lights and effectuated a traffic stop on Appellant's vehicle. The citizen caller reported that a nice looking older car with an elderly man had momentarily stalled at a stoplight. The caller asked the driver if he needed assistance and he indicated he was all right. After starting the car, the driver proceeded through the traffic light and parked in a Walgreen's parking lot. The caller initially mentioned the driver may be intoxicated or under the influence but later expressed a belief the driver may be confused but the caller did not think the driver was intoxicated. The caller expressed concern that because the driver was now parked in the Walgreen's parking lot she wanted someone to check on him. A police officer responding to the call pulled into the parking lot and effectuated a traffic stop on the Appellant by turning on his overhead lights. After making contact with the Appellant the Officer noted signs of alcohol intoxication and Appellant was subsequently arrested for suspicion of driving under the influence of alcohol. Appellant submitted to breath alcohol testing and the results were in excess of the legal limit. Appellant was charged with driving under the influence of alcohol.

ISSUES

1) Whether Appellant was seized for Fourth Amendment scrutiny?

2) Whether the warrantless seizure was lawful under the caretaker function exception to the warrant requirement?

3) Whether law enforcement had reasonable articulable suspicion a crime was being committed to effectuate a traffic stop?

ARGUMENT

The standard of review as provided in previous case law is as follows.

> On appeal from an order of the district court reviewing a determination made by a magistrate, we examine the record of the trial court independently, but with due regard for, the district court's intermediate appellate decision. In reviewing the denial of a motion to suppress, we defer to the lower court's findings of fact unless they are clearly erroneous. However, we exercise free review over the lower court's determination as to whether constitutional requirements have been satisfied in light of the facts found. (citations omitted) *State v. Pick, 124 Idaho 601 at 603 (Idaho App. 1993)*

On November 13, 2010 at approximately 5:20 p.m. Officer Wade of the Caldwell Police Department responded to citizen caller's request that law enforcement check on the welfare of a driver in the Walgreen's parking lot. Tr. p 7 ls. 4-22. In an approximately two minute and

twenty second 911 call a person identified as Becky described having made contact with an elderly driver in a nice older car that had stalled at an intersection. The caller indicated she had spoken to the driver and asked if he needed help. She told dispatch the driver had told her he did not need assistance and restarted the car. He proceeded through the intersection and parked in a Walgreen's parking lot. The caller initially indicated the driver may be intoxicated or under the influence and then later told the 911 operator that she did not believe the driver was intoxicated. The caller said she thought the driver seemed confused but the caller did not articulate further information to support that suspicion. The caller further stated she hoped the driver was not having a medical condition such as a stroke but again did not articulate a reason for her speculation. Because the driver had parked in Walgreen's parking lot the caller wanted to see if the dispatcher could have someone check on driver. JX 1.

The caller did not say she had observed any traffic violations, the odor of alcohol, nor did she consider the matter such an emergency that she deemed it necessary to render immediate aid herself. The caller merely noted an older man had momentarily stalled a nice older car, seemed confused although she did not articulate further reason for this belief, the man was offered help and he declined further assistance and then had pulled into a Walgreen's parking lot. The caller then appears to engage in nothing more than speculation as to whether the driver could be suffering a medical condition and asked the dispatcher if someone could check on him. Although the caller expressed a concern, there was nothing in the tone or statements of the caller that an emergency was taking place.

The driver was identified as the Appellant William Fifer. Tr. p 10 ls. 2-7. Officer Wade testified he received the call and drove to the Walgreen's location where he observed the blue Camaro about to leave the parking lot. He pulled in front of the Camaro, blocking it's exit. Tr. p 8 ls. 22-25 and p 9 ls. 6-9. Officer Wade further testified he was concerned about the driver's medical condition and possible intoxication as he turned on his overhead lights to effectuate the seizure. Tr. p 9 ls. 12-25 and p 10 ln 1.

Idaho Code §49-1404 requires a driver to stop or remain stopped after being given a visible or audible signal from a police vehicle to bring the vehicle to a stop. Case law supports the facts of this case creating a Fourth Amendment seizure where an officer used overhead

emergency lights and took action to block a vehicle's exit route. *State v. Willoughby, 147 Idaho 482, 487-88, 211 P.3d 91, 96-97 (2009); State v. Schmidt, 137 Idaho 301, 302-03, 47 P.3d 1271, 1272-73 (Ct. App. 2002); State v. Fry, 122 Idaho at 103, 831 P.2d at 945. (Ct. App. 1991).* Appellant was clearly seized by Officer Wade for Fourth Amendment scrutiny.

Following the seizure of Appellant, Officer Wade detected the odor of alcohol about Appellant and Appellant admitted to consuming alcohol. Tr. p 12 ls. 5-11. After further investigation Appellant was arrested for the charge of driving under the influence of alcohol. Tr. p 12 ls. 12-23.

Respondent seeks to justify the warrantless seizure as both a criminal investigation and as a caretaker function exception where immediate medical aid was required.

The United States Supreme Court first recognized that a police officer serving as a community caretaker to protect persons and property is constitutionally permitted to make searches and seizures without a warrant in *Cady v. Dombroski, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2nd 706 (1973).* In Cady the Supreme Court validated the search of an automobile previously impounded because a police officer was engaged in a community caretaker function to safely secure a firearm and his actions were unrelated to the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. *See Cady 413 U.S. at 441.* The United States Supreme Court has further indicated that the Fourth Amendment is not a bar to police who respond to exigencies or emergencies and believe a person is in need of immediate aid. See *Mincey v. Arizona, 437 U.S. 385, 98 S.CT. 2408, 57 L.Ed.2d 290 (1978).* In *Brigham City v. Stuart, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006)* the Supreme Court found that the Fourth Amendment was not violated when police officers responded to a noise complaint and entered a home after witnessing a fight inside where a person was punched in the face and spitting blood into a sink. Other Courts have attempted to rationally interpret the seemingly strict requirement that the caretaker function exception be totally divorced from investigating criminal activity and acquiring evidence as provided in *Cady* and the caretaker exception set out in *Mincey* and *Brigham City* where the actions of police officers are based upon exigent or emergency situations.

> The parties suggest that *Brigham City v. Stuart, 547 U.S. 398 (2006)*, might collapse the distinction between the two doctrines. In upholding a warrantless home entry pursuant to a claimed exigency, the Court in Stuart made clear that in general "an action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed objectively,'" support the action. Id. at 404. "The officer's subjective motivation is irrelevant." Id.. This holding initially seems in some tension with Dombrowski, which requires a court to determine whether a police officer was engaged in a function "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." 413 U.S. at 441. However, the Court in Stuart also made clear that '"an inquiry into programmatic purpose' is sometimes appropriate." 547 U.S. at 405. We think the best reading of the relationship between the two exceptions is that when analyzing a search made as the result of a routine police procedure, such as the policy of locating weapons in towed cars in Dombrowski, the court should examine the programmatic purpose of the policy— whether it was animated by community caretaking considerations or by law enforcement concerns. But when the search in question was performed by a law enforcement officer responding to an emergency, and not as part of a standardized procedure, the exigent circumstances analysis and its accompanying objective standard should apply. (citations omitted) *Hunsberger v. Wood, 08-1782 United States Court of Appeals, Fourth Circuit (June 29, 2009).*

In determining whether a particular community caretaker-related contact justifies a detention, Idaho courts must analyze "whether the intrusive action of the police was reasonable in view of all the surrounding circumstances." *Wixom, 130 Idaho at 754, 947 P.2d at 1002* (quoting *State v. Waldie, 126 Idaho 864, 867, 893 P.2d 811, 814 (Ct. App.1995)).* The reasonableness of an officer's actions under the community caretaking exception to the warrant requirement is to be tested upon practical considerations of everyday life on which reasonable persons act. *Maddox, 54 P.3d 464 at 467, 137 Idaho 821 at 824, (Ct. App. 2002).*

In Appellant's case neither of the circumstances supporting the caretaker exception were present. The caller asked if the dispatcher could have someone check on an elderly driver who had momentarily stalled his car and then pulled into a parking lot. Although the caller indicated the driver seemed confused and commented she hoped he was not having a stroke, it clearly did

not rise to the level of an emergency. Neither the caller's tone nor her own actions evidenced a belief that this was an emergency. The call is best characterized as a request for a welfare check on a person parked in their car and not an emergency requiring law enforcement to seize the person and prevent them from driving.

Sufficient evidence was not presented to justify a traffic stop to investigate possible criminal behavior.

> Whenever an officer detains a person--however briefly--a seizure has taken place. Such a seizure is lawful if it is reasonable. For an investigatory stop to be reasonable, it must be accompanied "by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." "The sufficiency of cause justifying an investigatory stop depends upon the totality of the circumstances. Based upon 'the whole picture,' the detaining officer must have a particularized and objective basis for suspecting the person stopped of criminal activity." (citations omitted) *State v. McAfee, 116 Idaho 1007 at 1009 (Ct. App. 1989).*

There was an initial comment by the caller that the Appellant may be intoxicated or under the influence but the caller later withdrew this comment as she clearly stated a belief that Appellant was not intoxicated. JX 1. There was not a belief that Appellant was driving in violation of the law and nothing was articulated to support such a position. The driving pattern consisted of a nice older vehicle that had stalled at an intersection, restarted and pulled into a parking lot. In arguing the existence of reasonable articulable suspicion for criminal activity, Respondent seeks to rely upon an initial comment by the caller that Appellant may be intoxicated or under the influence and disregard the same caller's statement she did not believe Appellant was intoxicated. Once the full statement of the caller is taken into account, reasonable articulable suspicion suggesting criminal activity has evaporated.

CONCLUSION

Because Appellant was seized in violation of his rights under both the Fourth and Fourteenth Amendments to the United States Constitution and Article 1 Section 17 of the Idaho

Constitution, the denial of Appellant's motion to suppress evidence should be reversed and all evidence flowing from the illegal seizure both tangible and intangible should be excluded as fruit of the unlawful seizure.

DATED this 25th day of June, 2012.

LOVAN ROKER & ROUNDS, P.C.

MATTHEW J. ROKER
Attorney for Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 25th day of June, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JAMES A. SCHILLER
MAGISTRATE COURT JUDGE
CANYON COUNTY COURTHOUSE
1115 Albany Street
CALDWELL, ID 83605

LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL
STATEHOUSE, ROOM 210
PO BOX 83720
BOISE, IDAHO 83720-0010

CALDWELL CITY PROSECUTING ATTORNEY
110 South 5th Avenue
CALDWELL, ID 83605

MATTHEW J. ROKER